

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD DARLING,

Plaintiff/Counterdefendant-
Appellee,

v

TANESHA PRYOR,

Defendant/Cross-Defendant,

and

ABEX INCOME TAX, INC.,

Defendant,

and

JOHN W. BARCUME,

Defendant/Counterplaintiff/Cross-
Plaintiff-Appellant.

UNPUBLISHED

December 22, 2011

No. 301107

Macomb Circuit Court

LC No. 2009-003117-CH

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Defendant, John Barcume, appeals as of right the trial court's judgment in favor of plaintiff, Richard Darling. We affirm.

I. FACTS

This appeal arises out of a business deal between two individuals, Richard Darling and Tracie Pryor. Darling and Pryor agreed to buy, renovate, and sell real estate properties, specifically, a certain property located in St. Clair Shores. Darling and Pryor agreed to form a corporation called Macomb Progressive Properties, Inc., (Macomb), and split ownership and profits on a fifty/fifty basis. Macomb purchased the St. Clair Shores property on November 6, 2007, pursuant to a sales contract. The sales contract listed John Barcume as the transaction's broker. Despite the fact that Darling and Pryor signed the sales contract as Macomb's incorporators, the sales contract actually conveyed the St. Clair Shores property to Macomb.

Darling spent considerable time and personal funds renovating the St. Clair Shores property. The renovations consisted of a complete remodeling of the interior with new finishes, cabinets, and flooring. Additionally, Darling installed new fixtures throughout the property and restored it to a condition that resembled a brand new home.

Although Darling knew that the sales contract listed Barcume as the broker, he was unaware that Barcume loaned Pryor \$37,000 to buy the property. Although Pryor told Barcume about “her” corporate formation, Barcume conveyed the funds to Pryor by giving her a check made payable to her personally. Pryor and Darling had agreed to split the purchase price of the property, and Pryor led Darling to believe that the money came from her own personal savings. In purported security for Barcume’s loan, Pryor signed a mortgage note pledging the St. Clair Shores property as collateral even though the property was not in Pryor’s name. After receiving the loan check from Barcume, Pryor deposited it into Macomb’s bank account.

Following the completed renovations, Pryor resisted listing the property with a real estate broker because she failed to comply with the repayment schedule for the personal loan that she accepted from Barcume. Without Darling’s knowledge, Pryor then executed a quit claim deed from Macomb to Barcume in satisfaction for the debt. Barcume took possession of the property and while he prepared the property for rental tenants, Darling arrived and to put a “for sale” sign in the lawn. Darling learned of what had transpired and brought this suit.

Darling filed a complaint containing eight counts against Barcume and Pryor. Darling alleged Count I, breach of contract against Pryor; Count II, breach of fiduciary duty against Pryor; Count III, accounting malpractice against Pryor; Count IV, fraud against Pryor; Count V, accounting malpractice against Abex Income Tax (Barcume’s accounting company); Count VI, constructive trust over the St. Clair Shores property against Barcume; Count VII, civil conspiracy against Barcume; and Count VIII, dissolution and accounting against Pryor.

Barcume and Abex Income Tax filed a countercomplaint against Darling, alleging Count I, trespass to land; Count II, interference with prospective business advantage; and Count III, action to quiet title to real estate.

Barcume and Abex Income Tax then moved for summary disposition pursuant to MCR 2.116(C)(10) with respect to Counts V, VI, and VII of Darling’s complaint. Darling also moved for summary disposition pursuant to MCR 2.116(C)(8) and (10).

Pryor defaulted on Counts I, II, III, IV, and VIII. And the trial court granted summary disposition on Count V of Darling’s complaint because Darling failed to demonstrate a genuine issue of material fact regarding accounting malpractice against Abex Income Tax. However, the trial court denied summary disposition on Count VI, constructive trust, and on Count VII, civil conspiracy, due to the existence of a genuine issue of material fact. The trial court also determined that summary disposition was not warranted on Barcume’s countercomplaint because there were questions of fact regarding Barcume’s interest in the real property.

Barcume moved for reconsideration, seeking to dismiss Counts VI and VII of Darling’s complaint, but the trial court denied his motion because Barcume failed to demonstrate a

palpable error which misled the court and would result in a different disposition from correction of that error. The remaining claims then went to trial.

After a bench trial, the trial court found for Darling on Count VI of his complaint and ordered a constructive trust in his favor, which awarded him the entire St. Clair Shores property. However, the trial court did not find a civil conspiracy, Count VII, as alleged by Darling in his complaint. The trial court dismissed the countercomplaint, but entered a money judgment in Barcume's favor against Pryor for \$56,345.50.

Barcume now appeals the ruling in favor of Darling on the constructive trust count.

II. STANDING

A. STANDARD OF REVIEW

Barcume argues that the trial court erred in concluding that Darling, in his individual capacity, had standing to challenge the conveyance to Barcume because Darling did not personally own the St. Clair Shores property and he did not bring suit on behalf of Macomb. This Court reviews questions of standing de novo.¹

B. ANALYSIS

A corporation is a separate and distinct legal entity from its shareholders,² and, generally, a suit to redress or prevent injury to a corporation must be brought in the name of the corporation and not its individual stockholders, officers, or employees.³ However, courts may ignore the corporate legal entity fiction when it is invoked to subvert justice.⁴ Therefore, "[t]he general rule is inapplicable where an individual shows a violation of a duty owed directly to him."⁵ The exception to this rule does not simply arise because the wrongdoing results in damage to both the individual and the corporation.⁶ Rather, it is limited to cases where the wrongdoing amounts to a breach of duty owed to the individual personally.⁷

¹ *Prentis Family Foundation v Barbara Ann Karmanos Cancer Ctr Institute*, 266 Mich App 39, 56; 698 NW2d 900 (2005).

² *Foodland Distribs v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996).

³ *Mich Nat'l Bank v Mudgett*, 178 Mich App 677, 679; 444 NW2d 534 (1989).

⁴ *Foodland Distribs*, 220 Mich App at 456.

⁵ *Mich Nat'l Bank*, 178 Mich App at 679-680.

⁶ *Id.*

⁷ *Id.* at 680.

“A constructive trust may be imposed ‘where such trust is necessary to do equity or to prevent unjust enrichment’”⁸ “Hence, such a trust may be imposed when property has been obtained through fraud, misrepresentation, concealment, . . . or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property”⁹

Here, it is obvious that Pryor defrauded Darling when she deeded the property to Barcume without Darling’s knowledge or consent. Despite this, Barcume asserts that he had no knowledge of the relationship between Pryor and Darling and is therefore a bona fide purchaser without knowledge of the defected title. This assertion fails, however, because Barcume was the broker for the purchase of the property and had some, if not complete, knowledge of Darling’s interest in Macomb. And although Barcume did not personally perpetrate the fraud, a constructive trust is still permissible because of the damage Darling suffered as a result.

The remedy which equity gives to the defrauded person is most extensive. It reaches all those who were actually concerned in the fraud, all who directly and knowingly participated in its fruits, and all those who derive title from them voluntarily or with notice. A court of equity will [take] property fraudulently acquired, not only from the perpetrator of the fraud, but . . . from his children and his children’s children, or . . . from any persons amongst whom he may have parceled out the fruits of his fraud.

* * *

When property subject to a trust is fraudulently transferred . . . equity may work out and protect the rights of the beneficial owner by regarding the property as though it were actually impressed with a trust in the hands of the one who holds the legal title, by treating such person as though he were an actual trustee, and by enforcing such trust by means of a conveyance, accounting, payment, injunction, and other appropriate remedies.^[10]

In sum, although Pryor was the actual perpetrator of the fraud, the remedy of a constructive trust may be imposed against Barcume because he benefited from the fruits of Pryor’s fraud. Darling had a personal interest in the St. Clair Shores property, and his resulting injury was not merely derivative of the injury to Macomb. Therefore, equity allowed the trial court to determine, correctly, that Darling had standing to challenge the conveyance and impose a constructive trust over the St. Clair Shores property.

⁸ *Kammer Asphalt Paving Co v East China Twp Schs*, 443 Mich 176, 188; 504 NW2d 635 (1993), quoting *Ooley v Collins*, 344 Mich 148, 158; 73 NW2d 464 (1955).

⁹ *Id.* (internal quotation marks and citations omitted).

¹⁰ *Herpolsheimer v AB Herpolsheimer Realty Co*, 344 Mich 657, 666-667; 75 NW2d 333 (1956) (quotations marks and citations omitted).

III. TRIAL COURT’S FINDINGS OF FACT

A. STANDARD OF REVIEW

Barcume argues that the record did not support many of the findings of fact that the trial court discussed in its opinion and order, which were used as a basis for the imposition of a constructive trust. Specifically, Barcume argues that the facts did not support the finding of fraud. This Court reviews a trial court’s factual findings for clear error.¹¹ A finding is clearly erroneous when, although there is evidence to support it, upon review of the entire record, the appellate court is left with a definite and firm conviction that a mistake was made.¹² This Court reviews de novo conclusions of law.¹³

B. ANALYSIS

Barcume asserts that findings of fact and conclusions of law No. 17, erroneously states that “[a]t some point during the renovation process, Defendant Pryor defaulted on the loan from [Barcume].” Barcume contends that Pryor’s loan was current and that the reason he acquired the deed was because Pryor was frustrated with the St. Clair Shores property and wanted to get rid of it. However, the record reveals that the reason Pryor gave the deed to Barcume was not because she was frustrated with the current state of the St. Clair Shores property. Rather, it was because she could not pay Barcume and gave him the deed in satisfaction of the debt. Therefore, the trial court’s finding in this instance was not clearly erroneous.

Barcume also argues that the trial court committed error when it concluded that he served as the broker with respect to the St. Clair Shores property. Barcume did point out some irregularities within the purchase agreement. However, these irregularities had no bearing on whether Barcume knew, or should have known, that Darling was involved in the transaction, as Darling’s name appears on the purchase agreement. Because Barcume served as the broker for the purchase of the St. Clair Shores property he had notice and knowledge of Darling’s interest in the property. It was within the trial court’s discretion to accept or discount Barcume’s testimony regarding the errors and the mere existence of these errors does not warrant reversal.¹⁴

Barcume also disputes the trial court’s finding that there was no evidence that Barcume transferred funds to Macomb. Barcume rests his contention on the fact that he endorsed the loan check to Pryor, which she then deposited into the Macomb bank account. Barcume asserts that since the check was deposited into the corporate account, he had an interest in the St. Clair Shores property. However, this argument has no merit because the check was endorsed to Pryor only, she independently deposited the money into the corporate account, and Darling knew nothing of the loan agreement between Barcume and Pryor. The check constituted a personal

¹¹ *Westlake Trans, Inc v Pub Svc Comm*, 255 Mich App 589, 611; 662 NW2d 784 (2003).

¹² *Id.*

¹³ *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

¹⁴ MCR 2.116(A)(2).

loan from Barcume to Pryor. Therefore, it was not clear error for the trial court to conclude that Barcume had not purchased the St. Clair Shores property. Barcume wrote the check as a loan for Pryor to purchase the property and was not intended to secure any interest on his behalf in the St. Clair Shores property.

Barcume also takes issue with the trial court's finding that he perpetrated fraud against Darling. But Barcume knew the loan to Pryor was for the purchase of a corporate asset, the St. Clair Shores property. Further, Barcume accepted the transfer of the corporate assets, the St. Clair Shores property, in satisfaction of a personal loan. Yet, Barcume made no attempts to investigate or obtain corporate documents that would have shown Darling's name. As a matter of law, if facts exist that would put a reasonable business person on notice as to an agent's authority, it is the duty of that person to inquire as to the true scope of that authority.¹⁵ Barcume contends that there is no requirement for a purchaser to investigate whose name appears as an incorporator, especially where Pryor was Macomb's president. However, any presumption of authority on the part of a president as a matter of law does not extend to transfers of real estate.¹⁶ Therefore, the trial court did not commit clear error where it imposed a constructive trust as to Darling with respect to the St. Clair Shores property because allowing Barcume to keep it would be unconscionable and lead to unjust enrichment.

In sum, the trial court's findings of fact and conclusions of law were not clearly erroneous.

IV. EQUITY OF THE TRIAL COURT'S RELIEF GRANTED

A. STANDARD OF REVIEW

Barcume argues that the trial court did not do equity because the constructive trust it imposed in favor of Darling created an undeserved windfall for him. This Court reviews de novo a trial court's equitable determinations, but this Court reviews for clear error the supporting finding of facts.¹⁷

B. ANALYSIS

Barcume contends that the trial court erred in awarding a windfall to Darling when he does not deserve it. Barcume argues that because he spent his own money keeping the St. Clair Shores property maintained, he is entitled to compensation and that the property should be held in trust for Macomb and not Darling. Barcume correctly states that no one may be made richer through another's loss.¹⁸ But Barcume's loss is not a result of the grant of a constructive trust in favor of Darling. Barcume made a personal loan to Pryor on which she defaulted and for which

¹⁵ *Humphrey v Onaway-Alpena Tel Co*, 204 Mich 97, 109; 170 NW 1 (1918).

¹⁶ *Lansing Turnverein Soc v Carter*, 71 Mich 608, 611; 39 NW 851 (1888).

¹⁷ *Forest City Enterprises v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998).

¹⁸ *In Re Forfeiture of \$30,632.41*, 184 Mich App 677, 679; 459 NW2d 99 (1990).

she deeded the St. Clair Shores property to him in satisfaction. Barcume contends that this transfer granted him an interest in the St. Clair Shores property and that he has some rights in it. However, Barcume's belief is erroneous.

Barcume's loan to Pryor was a personal loan and not one made to Macomb. Barcume paid no consideration to Macomb with respect to the St. Clair Shores property, and Pryor should be responsible for repaying any personal funds he spent trying to maintain the property. Barcume relied on Pryor's conveyance of the St. Clair Shores property in satisfaction of his loan without investigating whether the conveyance was valid. Pryor had no right to make the conveyance without Darling's knowledge, and the trial court took note of this when it entered a money judgment in Barcume's favor against Pryor on November 22, 2010, for \$56,345.50. This figure included the amount of personal funds that Barcume spent maintaining the property.

The trial court was correct in finding that Darling was the true title holder of the property because Barcume did not purchase the property in good faith and without notice. Darling paid half of the purchase price (\$19,000) for the property, and deposited an additional \$7,663 into Macomb's account to rehabilitate the property. In addition, Darling contributed \$10,000 of his personal funds to purchase materials for the property. The total amount that Darling contributed to the property was \$37,500. The trial court awarded title to Darling, and not Macomb, because Darling was equitably entitled to it to avoid unjust enrichment, even though he personally did not have legal title to the property. "Constructive trusts are creatures of equity and their imposition makes the holder of the legal title the trustee for the benefit of another who, in good conscience, is entitled to the beneficial interest."¹⁹ Therefore, the trial court did not err in awarding the entire property to Darling.

In sum, the trial court did not err when it granted equitable relief in Darling's favor. The grant of equitable relief by the trial court to Darling was not a windfall at the expense of another.

V. RESIDENTIAL BUILDERS ACT

Barcume argues that Darling and Macomb are not entitled to equitable relief because they were acting as unlicensed residential builders.²⁰ However, Barcume did not raise this issue at trial. Therefore, we decline to address this unpreserved issue.²¹

We affirm.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher

¹⁹ *In re Estate of Swantek*, 172 Mich App 509, 517; 432 NW2d 307 (1988), quoting *Arndt v Vos*, 83 Mich App 484, 487; 268 NW2d 693 (1978).

²⁰ See MCL 339.2401.

²¹ *Napier v Jacobs*, 429 Mich 222, 227; 414 NW2d 862 (1987).